

House of Representatives, April 8, 1998. The Committee on Judiciary reported through REP. LAWLOR, 99th DIST., Chairman of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE DISCRIMINATORY PRACTICE COMPLAINT PROCEDURE OF THE COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 46a-57 of the general
2 statutes is repealed and the following is
3 substituted in lieu thereof:

4 (a) The Governor shall appoint [at least
5 twenty-five hearing officers to] FIVE
6 ADMINISTRATIVE LAW MAGISTRATES WITH THE ADVICE AND
7 CONSENT OF BOTH HOUSES OF THE GENERAL ASSEMBLY.
8 WHEN THE GENERAL ASSEMBLY IS NOT IN SESSION, ANY
9 VACANCY SHALL BE FILLED PURSUANT TO THE PROVISIONS
10 OF SECTION 4-19. FOR ADMINISTRATIVE LAW
11 MAGISTRATES APPOINTED BY THE GOVERNOR FOR TERMS
12 COMMENCING OCTOBER 1, 1998, ONE ADMINISTRATIVE LAW
13 MAGISTRATE SHALL SERVE FOR A TERM OF THREE YEARS,
14 TWO SHALL SERVE FOR A TERM OF FOUR YEARS AND TWO
15 SHALL SERVE FOR A TERM OF FIVE YEARS. THEREAFTER
16 ADMINISTRATIVE LAW MAGISTRATES SHALL SERVE FOR A
17 TERM OF FIVE YEARS. THE GOVERNOR MAY REMOVE AN
18 ADMINISTRATIVE LAW MAGISTRATE FOR CAUSE.

19 (b) ADMINISTRATIVE LAW MAGISTRATES SHALL
20 SERVE FULL-TIME AND SHALL conduct the hearings
21 authorized by the provisions of this chapter.

22 [Each hearing officer] AN ADMINISTRATIVE LAW
23 MAGISTRATE SHALL HAVE THE POWERS GRANTED TO
24 HEARING OFFICERS AND PRESIDING OFFICERS BY CHAPTER
25 54 AND THIS CHAPTER. AN ADMINISTRATIVE LAW
26 MAGISTRATE shall be an attorney admitted to the
27 practice of law in this state for at least five
28 years OR HAVE FIVE YEARS EXPERIENCE IN CIVIL
29 RIGHTS LAW OR EMPLOYMENT OR HOUSING DISCRIMINATION
30 LAW. [and shall serve for a term of five years.
31 Any hearing officer, approved by the governor
32 prior to and serving on October 1, 1993, as a
33 hearing officer, shall automatically be deemed
34 appointed to a five-year term as a hearing officer
35 on October 1, 1993.] Any commissioner of the
36 Superior Court who is able and willing to hear
37 discriminatory practice complaints may submit his
38 name to the Governor for consideration for
39 appointment as [a hearing officer] AN
40 ADMINISTRATIVE LAW MAGISTRATE. NO ADMINISTRATIVE
41 LAW MAGISTRATE SHALL APPEAR BEFORE THE COMMISSION
42 OR ANOTHER HEARING OFFICER FOR ONE YEAR AFTER
43 LEAVING OFFICE.

44 (c) THE CHIEF ADMINISTRATIVE LAW MAGISTRATE
45 AND EACH FULL-TIME ADMINISTRATIVE LAW MAGISTRATE
46 SHALL RECEIVE AN ANNUAL SALARY EQUIVALENT TO THAT
47 SET FORTH IN SUBSECTION (h) OF SECTION 46b-231, AS
48 AMENDED, FOR THE CHIEF FAMILY SUPPORT MAGISTRATE
49 AND FAMILY SUPPORT MAGISTRATES RESPECTIVELY AND
50 SHALL BE ENTITLED TO THE FRINGE BENEFITS AVAILABLE
51 TO OTHER STATE EMPLOYEES. THE COST OF STENOGRAPHIC
52 AND CLERICAL ASSISTANCE, EQUIPMENT AND SUPPLIES
53 SHALL BE PAID BY THE STATE UPON THE APPROVAL OF
54 THE COMMISSIONER OF ADMINISTRATIVE SERVICES. THE
55 BUDGET FOR ADMINISTRATIVE LAW MAGISTRATES SHALL BE
56 A SEPARATE LINE ITEM WITHIN THE BUDGET OF THE
57 COMMISSION.

58 (d) ON OR BEFORE OCTOBER 1, 1998, THE
59 EXECUTIVE DIRECTOR SHALL DESIGNATE ONE
60 ADMINISTRATIVE LAW MAGISTRATE TO SERVE AS CHIEF
61 ADMINISTRATIVE LAW MAGISTRATE FOR A TERM OF ONE
62 YEAR. THE CHIEF ADMINISTRATIVE LAW MAGISTRATE
63 SHALL SUPERVISE AND ASSIGN THE ADMINISTRATIVE LAW
64 MAGISTRATES TO CONDUCT HEARINGS ON COMPLAINTS,
65 INCLUDING COMPLAINTS FOR WHICH A TRIAL ON THE
66 MERITS HAS NOT COMMENCED PRIOR TO OCTOBER 1, 1998,
67 ON A ROTATING BASIS.

68 (e) PART-TIME HEARING OFFICERS SERVING ON THE
69 EFFECTIVE DATE OF THIS ACT SHALL CONTINUE TO SERVE

70 UNTIL ALL CASES ASSIGNED TO ANY SUCH PART-TIME
71 HEARING OFFICER ARE COMPLETED. IF A PART-TIME
72 HEARING OFFICER BELIEVES THAT A CASE SHOULD BE
73 TRANSFERRED TO AN ADMINISTRATIVE LAW MAGISTRATE,
74 THE PART-TIME HEARING OFFICER SHALL SOLICIT THE
75 VIEWS OF THE PARTIES AND SUBMIT A RECOMMENDATION
76 TO THE CHIEF ADMINISTRATIVE LAW MAGISTRATE. THE
77 CHIEF ADMINISTRATIVE LAW MAGISTRATE SHALL
78 DETERMINE WHETHER THE CASE SHOULD BE ASSIGNED TO
79 AN ADMINISTRATIVE LAW MAGISTRATE OR WHETHER SUCH
80 CASE SHOULD REMAIN WITH SUCH PART-TIME HEARING
81 OFFICER.

82 [(b)] (f) Each PART-TIME hearing officer and
83 each commissioner shall receive one hundred
84 twenty-five dollars per day for each day on which
85 he or she conducts hearings and, upon presentation
86 of adequate documentation, compensation in the
87 amount of one hundred twenty-five dollars per day
88 prorated for the time during each day on which the
89 officer or commissioner is not conducting hearings
90 but is engaged in the preparation of findings,
91 decisions, orders or rulings, and their reasonable
92 expenses, including necessary stenographic and
93 clerical help, shall be paid by the state upon
94 approval of the Commissioner of Administrative
95 Services.

96 [(c)] (g) When serving as a presiding officer
97 as provided in section 46a-84, AS AMENDED BY THIS
98 ACT, each ADMINISTRATIVE LAW MAGISTRATE OR hearing
99 officer shall have the same subpoena powers as are
100 granted to commissioners by subdivision (9) of
101 section 46a-54. Each presiding officer shall also
102 have the power to determine a reasonable fee to be
103 paid to an expert witness, including but not
104 limited to, any practitioner of the healing arts,
105 as defined in section 20-1, dentist, registered
106 nurse or licensed practical nurse, as defined in
107 section 20-87a, and real estate appraiser when any
108 such expert witness is summoned by the commission
109 to give expert testimony, in person or by
110 deposition, in any contested case proceeding,
111 pursuant to section 46a-84, AS AMENDED BY THIS
112 ACT. Said fee shall be paid to the expert witness
113 in lieu of all other witness fees.

114 [(d)] Hearing officers shall be selected to
115 conduct hearings on a rotating basis; if any
116 officer refuses to hear a case, his or her name
117 shall be placed at the bottom of the list. If any

118 hearing officer refuses three consecutive requests
119 to hear cases in any calendar year he or she shall
120 be deemed to have resigned.]

121 Sec. 2. Section 46a-83 of the general
122 statutes is repealed and the following is
123 substituted in lieu thereof:

124 (a) Within [ten] TWENTY days after the filing
125 of any discriminatory practice complaint, or an
126 amendment adding an additional respondent, the
127 commission shall cause the complaint to be served
128 upon the respondent together with a notice (1)
129 identifying the alleged discriminatory practice,
130 and (2) advising of the procedural rights and
131 obligations of a respondent under this chapter.
132 The respondent shall file a written answer to the
133 complaint under oath with the commission within
134 thirty days of receipt of the complaint, provided
135 [the] A RESPONDENT MAY REQUEST, AND THE COMMISSION
136 MAY GRANT, FOR GOOD CAUSE SHOWN, ONE EXTENSION OF
137 TIME OF FIFTEEN DAYS WITHIN WHICH TO FILE AN
138 ANSWER TO A COMPLAINT. THE answer to any complaint
139 alleging a violation of section 46a-64c or 46a-81e
140 shall be filed within ten days of receipt.

141 (b) Within ninety days of the filing of [a]
142 THE RESPONDENT'S ANSWER TO THE complaint, the
143 executive director or his designee shall review
144 the file. The review shall include the complaint,
145 the respondent's answer and the responses to the
146 commission's requests for information, if any, and
147 the complainant's comments, if any, to the
148 respondent's answer and information responses. If
149 the executive director or his designee determines
150 that the complaint fails to state a claim for
151 relief or is frivolous on its face, or there is no
152 reasonable possibility that investigating the
153 complaint will result in a finding of reasonable
154 cause, the complaint shall be dismissed. This
155 subsection shall not apply to any complaint
156 alleging a violation of section 46a-64c or
157 46a-81e. [On or before January 1, 1995, the
158 provisions of this section shall apply to all
159 complaints other than those alleging a violation
160 of section 46a-64c or 46a-81e pending assignment
161 to an investigator on July 1, 1994.] The executive
162 director shall report the results of his
163 determinations pursuant to this subsection to the
164 commission quarterly during each year.

165 (c) The executive director of the commission
166 or his designee shall determine the most
167 appropriate method for processing any complaint
168 pending after review in accordance with subsection
169 (b) of this section. The commission may conduct
170 mandatory mediation sessions, expedited or
171 extended fact-finding conferences or complete
172 investigations or any combination thereof during
173 the investigatory process for the purpose of
174 finding facts, promoting the voluntary resolution
175 of complaints or determining if there is
176 reasonable cause for believing that a
177 discriminatory practice has been or is being
178 committed as alleged in the complaint. As used in
179 this section and section 46a-84, AS AMENDED BY
180 THIS ACT, reasonable cause means a bona fide
181 belief that the material issues of fact are such
182 that a person of ordinary caution, prudence and
183 judgment could believe the facts alleged in the
184 complaint. A complaint may be dismissed if a
185 complainant, after notice and without good cause,
186 fails to attend a mandatory mediation session. A
187 mediator may recommend, but not order, a
188 resolution of the complaint. A complaint may be
189 dismissed if the respondent has eliminated the
190 discriminatory practice complained of, taken steps
191 to prevent a like occurrence in the future and
192 offered full relief to the complainant, even
193 though the complainant has refused such relief.

194 (d) Before issuing a finding of reasonable
195 cause or no reasonable cause, the investigator
196 shall afford each party and his representative an
197 opportunity to provide written or oral comments on
198 all evidence in the commission's file, except as
199 otherwise provided by federal law or any other
200 provision of the general statutes. The
201 investigator shall consider such comments in
202 making his determination. The investigator shall
203 make a finding of reasonable cause or no
204 reasonable cause in writing and shall list the
205 factual findings on which it is based not later
206 than [twelve months] ONE HUNDRED NINETY DAYS from
207 the date of [filing] THE DETERMINATION BASED ON
208 THE REVIEW of the complaint, CONDUCTED PURSUANT TO
209 SUBSECTION (b) OF THIS SECTION, except that for
210 good cause shown, the executive director or his
211 designee may grant no more than two extensions of
212 the investigation of three months each. If the

213 investigator makes a determination that there is
214 reasonable cause to believe that a violation of
215 section 46a-64c has occurred, the complainant and
216 the respondent shall have twenty days from receipt
217 of notice of the reasonable cause finding to elect
218 a civil action in lieu of an administrative
219 hearing pursuant to section 46a-84, AS AMENDED BY
220 THIS ACT. If either the complainant or the
221 respondent requests a civil action, the
222 commission, through the Attorney General or the
223 commission counsel, shall commence an action
224 pursuant to subsection (b) of section 46a-89
225 within forty-five days of receipt of the
226 complainant's or the respondent's notice of
227 election of a civil action.

228 (e) If the investigator issues a finding of
229 no reasonable cause or if the complaint is
230 dismissed (1) for failure to state a claim for
231 relief, (2) because it is frivolous on its face or
232 (3) because there is no reasonable possibility
233 that investigating the complaint will result in a
234 finding [or] OF reasonable cause OR IF THE
235 COMPLAINT IS DISMISSED PURSUANT TO SUBSECTION (c)
236 OF THIS SECTION, the complainant may request
237 reconsideration of such finding or dismissal with
238 the [commission] EXECUTIVE DIRECTOR OF THE
239 COMMISSION, OR HIS DESIGNEE, not later than
240 fifteen days from the issuance of such finding or
241 dismissal. The [commission] EXECUTIVE DIRECTOR OF
242 THE COMMISSION, OR HIS DESIGNEE, shall reconsider
243 or reject within ninety days of the issuance of
244 such finding or dismissal. The [commission]
245 EXECUTIVE DIRECTOR OF THE COMMISSION, OR HIS
246 DESIGNEE, shall conduct such additional
247 proceedings as may be necessary to render a
248 decision on the request for reconsideration.

249 (f) Upon a determination that there is
250 reasonable cause to believe that a discriminatory
251 practice has been or is being committed as alleged
252 in the complaint, an investigator shall attempt to
253 eliminate the practice complained of by
254 conference, conciliation and persuasion within
255 [sixty] FIFTY days of a finding of reasonable
256 cause. The refusal to accept a settlement shall
257 not be grounds for dismissal of any complaint.

258 (g) No commissioner or employee of the
259 commission may disclose, except to the parties or
260 their representatives, what has occurred in the

261 course of such endeavors provided the commission
262 may publish the facts in the case and any
263 complaint which has been dismissed and the terms
264 of conciliation when a complaint has been
265 adjusted. Each party and his representative shall
266 have the right to inspect and copy documents,
267 statements of witnesses and other evidence
268 pertaining to his complaint, except as otherwise
269 provided by federal law or any other provision of
270 the general statutes.

271 (h) In the investigation of any complaint
272 filed pursuant to this chapter, the commission may
273 issue subpoenas requiring the production of
274 records and other documents relating to the
275 complaint under investigation.

276 (i) The executive director of the commission
277 or his designee may enter an order of default
278 against a respondent (1) who, after notice, fails
279 to answer a complaint in accordance with
280 subsection (a) of this section or within such
281 extension of time as may have been granted or (2)
282 who fails to answer interrogatories issued
283 pursuant to subdivision (11) of section 46a-54 or
284 fails to respond to a subpoena issued pursuant to
285 subsection (h) of this section and subdivision (9)
286 of section 46a-54, provided the executive director
287 or his designee shall consider any timely filed
288 objection or (3) who, after notice and without
289 good cause, fails to attend a mandatory mediation
290 session. Upon entry of an order of default, the
291 executive director or his designee shall appoint a
292 presiding officer to enter, after notice and
293 hearing, an order eliminating the discriminatory
294 practice complained of and making the complainant
295 whole. The commission OR THE COMPLAINANT may
296 petition the Superior Court for enforcement of any
297 order for relief pursuant to section 46a-95.

298 Sec. 3. Section 46a-83a of the general
299 statutes is repealed and the following is
300 substituted in lieu thereof:

301 If a complaint is dismissed pursuant to
302 subsection (b) [or (c) of section 46a-83, or if a]
303 OF SECTION 46a-83, AS AMENDED BY THIS ACT, OR IS
304 DISMISSED FOR FAILURE TO ACCEPT FULL RELIEF
305 PURSUANT TO SUBSECTION (c) OF SAID SECTION 46a-83
306 AND THE COMPLAINANT DOES NOT REQUEST
307 reconsideration of SUCH a dismissal as provided in
308 subsection (e) of SAID section 46a-83 [is

309 rejected, the complainant shall have a right of
310 appeal pursuant to section 46a-94a. The provisions
311 of subsection (j) of section 4-183 shall apply to
312 any appeal pursuant to this section] THE EXECUTIVE
313 DIRECTOR OF THE COMMISSION SHALL ISSUE A RELEASE
314 AND THE COMPLAINANT MAY, WITHIN NINETY DAYS OF
315 RECEIPT OF THE RELEASE FROM THE COMMISSION, BRING
316 AN ACTION IN ACCORDANCE WITH SECTION 46a-100, AS
317 AMENDED BY THIS ACT, AND SECTIONS 46a-102 TO
318 46a-104, INCLUSIVE.

319 Sec. 4. Section 46a-84 of the general
320 statutes is repealed and the following is
321 substituted in lieu thereof:

322 (a) If the investigator fails to eliminate a
323 discriminatory practice complained of pursuant to
324 section 46a-82 within [forty-five] FIFTY days of a
325 finding of reasonable cause, he shall, WITHIN TEN
326 DAYS, certify the complaint and the results of the
327 investigation to the executive director of the
328 commission and to the Attorney General.

329 (b) Upon certification of the complaint, the
330 executive director of the commission or his
331 designee shall appoint a hearing officer, [or]
332 hearing adjudicator OR ADMINISTRATIVE LAW
333 MAGISTRATE to act as a presiding officer to hear
334 the complaint or to conduct settlement
335 negotiations and shall cause to be issued and
336 served in the name of the commission a written
337 notice, together with a copy of the complaint, as
338 the same may have been amended, requiring the
339 respondent to answer the charges of the complaint
340 at a hearing before the presiding officer or
341 hearing adjudicator at a time and place to be
342 specified in the notice, provided such hearing
343 shall be commenced by convening a hearing
344 conference not later than [ninety] FORTY-FIVE days
345 after [a finding of reasonable cause] THE
346 CERTIFICATION OF THE COMPLAINT. The hearing shall
347 be a de novo hearing on the merits of the
348 complaint and not an appeal of the commission's
349 processing of the complaint prior to its
350 certification. The hearing shall proceed with
351 reasonable dispatch and be concluded in accordance
352 with the provisions of section 4-180.

353 (c) The place of any hearing may be the
354 office of the commission or another place
355 designated by it.

356 (d) The case in support of the complaint
357 shall be presented at the hearing by the Attorney
358 General, who shall be counsel for the commission,
359 or by the commission counsel as provided in
360 section 46a-55, as the case may be. If the
361 Attorney General or the commission counsel
362 determines that a material mistake of law or fact
363 has been made in the finding of reasonable cause,
364 he may withdraw the certification of the complaint
365 and remand the file to the investigator for
366 further action. The complainant may be represented
367 by an attorney of his own choice. If the Attorney
368 General or the commission counsel, as the case may
369 be, determines that the interests of the state
370 will not be adversely affected, he may allow the
371 attorney for the complainant to present all or
372 part of the case in support of the complaint. No
373 commissioner may participate in the deliberations
374 of the presiding officer in the case.

375 (e) A hearing officer, hearing adjudicator,
376 ADMINISTRATIVE LAW MAGISTRATE or attorney who
377 volunteers service pursuant to subdivision (16) of
378 section 46a-54 may supervise settlement endeavors,
379 or, in employment discrimination cases only, the
380 complainant and respondent, with the permission of
381 the commission, may engage in alternate dispute
382 resolution endeavors for not more than three
383 months. The cost of such alternate dispute
384 resolution endeavors shall be borne by the
385 complainant or the respondent or both and not by
386 the commission. Any endeavors or negotiations for
387 conciliation, settlement or alternate dispute
388 resolution shall not be received in evidence.

389 (f) The respondent may file a written answer
390 to the complaint under oath and appear at the
391 hearing in person or otherwise, with or without
392 counsel, and submit testimony and be fully heard.
393 If the respondent fails to file a written answer
394 prior to the hearing within the time limits
395 established by regulation adopted by the
396 commission in accordance with chapter 54 or fails
397 to appear at the hearing after notice in
398 accordance with section 4-177, the presiding
399 officer or hearing adjudicator may enter an order
400 of default and order such relief as is necessary
401 to eliminate the discriminatory practice and make
402 the complainant whole. The commission OR THE
403 COMPLAINANT may petition the Superior Court for

404 enforcement of any such order for relief pursuant
405 to the provisions of section 46a-95.

406 (g) The presiding officer or hearing
407 adjudicator conducting any hearing shall permit
408 reasonable amendment to any complaint or answer
409 and the testimony taken at the hearing shall be
410 under oath and be transcribed at the request of
411 any party.

412 Sec. 5. Subsection (a) of section 46a-94a of
413 the general statutes is repealed and the following
414 is substituted in lieu thereof:

415 (a) The Commission on Human Rights and
416 Opportunities, any respondent or any complainant
417 aggrieved by a final order of a presiding officer
418 or any complainant aggrieved by the dismissal of
419 his complaint by the commission FOR FAILURE TO
420 ATTEND A MANDATORY MEDIATION SESSION AS PROVIDED
421 IN SUBSECTION (c) OF SECTION 46a-83, AS AMENDED BY
422 THIS ACT, A FINDING OF NO REASONABLE CAUSE AS
423 PROVIDED IN SUBSECTION (d) OF SAID SECTION 46a-83
424 OR REJECTION OF RECONSIDERATION OF ANY DISMISSAL
425 AS PROVIDED IN SUBSECTION (e) OF SAID SECTION
426 46a-83 may appeal therefrom in accordance with
427 section 4-183. [, except venue for such appeal
428 shall be in the judicial district in which the
429 discriminatory practice is alleged to have
430 occurred or in the judicial district in which such
431 person resides or transacts business.] The court
432 on appeal shall also have jurisdiction to grant to
433 the commission, respondent or complainant such
434 temporary relief or restraining order as it deems
435 just and suitable, and in like manner to make and
436 enter a decree enforcing or modifying and
437 enforcing as so modified or setting aside, in
438 whole or in part, the order sought to be reviewed.

439 Sec. 6. Section 46a-100 of the general
440 statutes is repealed and the following is
441 substituted in lieu thereof:

442 Any person who has timely filed a complaint
443 with the Commission on Human Rights and
444 Opportunities in accordance with section 46a-82 [,
445 alleging a violation of section 46a-60] and who
446 has obtained a release from the commission in
447 accordance with section 46a-83a, AS AMENDED BY
448 THIS ACT, OR 46a-101, AS AMENDED BY THIS ACT, may
449 also bring an action in the superior court for the
450 judicial district in which the discriminatory
451 practice is alleged to have occurred or in which

452 the respondent transacts business, except any
453 action involving a state agency or official may be
454 brought in the superior court for the judicial
455 district of Hartford-New Britain*.

456 Sec. 7. Subsection (b) of section 46a-101 of
457 the general statutes is repealed and the following
458 is substituted in lieu thereof:

459 (b) THE COMPLAINANT AND THE RESPONDENT, BY
460 THEMSELVES OR THEIR ATTORNEYS, MAY JOINTLY REQUEST
461 THAT THE COMPLAINANT RECEIVE A RELEASE FROM THE
462 COMMISSION AT ANY TIME FROM THE DATE OF FILING THE
463 COMPLAINT UNTIL THE EXPIRATION OF TWO HUNDRED TEN
464 DAYS FROM THE DATE OF FILING OF THE COMPLAINT. The
465 complainant, or his attorney, may request a
466 release from the commission if his complaint with
467 the commission is still pending after the
468 expiration of two hundred ten days from the date
469 of its filing.

470 Sec. 8. (NEW) (a) Notwithstanding the failure
471 of the Commission on Human Rights and
472 Opportunities to comply with the time requirements
473 of section 46a-83 of the general statutes, as
474 amended by this act, and section 46a-84 of the
475 general statutes, as amended by this act, with
476 respect to a complaint before the commission, the
477 jurisdiction of the commission over any such
478 complaint shall be retained.

479 (b) The commission shall report annually to
480 the judiciary committee of the General Assembly
481 and the Governor: (1) The number of cases in the
482 previous fiscal year that exceeded the time frame,
483 including authorized extensions, set forth in
484 subsection (d) of section 46a-83 of the general
485 statutes, as amended by section 2 of this act; (2)
486 the reasons for the failure to comply with the
487 time frame; (3) the number of actions brought
488 pursuant to subsection (d) of this section and the
489 results thereof; and (4) the commission's
490 recommendations for legislative action, if any,
491 necessary for the commission to meet the statutory
492 time frame.

493 (c) If a complaint has been pending for more
494 than twenty-one months from the date of filing and
495 the commission has not issued a finding of
496 reasonable cause or no reasonable cause, the
497 executive director shall issue a notice to the
498 complainant, the respondent and the investigator
499 scheduling a meeting forthwith to ascertain when

500 such finding can be made. Such notice shall be
501 sent by certified mail, return receipt requested,
502 and shall also advise the complainant of his right
503 to request a release of jurisdiction in accordance
504 with section 46a-101 of the general statutes, as
505 amended by section 7 of this act. After such
506 meeting, if the complainant, the respondent and
507 the investigator cannot agree on a date certain
508 for the issuance of a finding of reasonable cause
509 or no reasonable cause, the executive director
510 shall, in his discretion, issue an appropriate
511 order to the investigator, given the facts and
512 circumstances of the case, for the issuance of
513 such finding.

514 (d) If a complaint has been pending for more
515 than two years after the date of filing pursuant
516 to section 46a-82 of the general statutes, or if
517 the investigator fails to issue a finding of
518 reasonable cause or no reasonable cause by the
519 date ordered by the executive director of the
520 commission pursuant to subsection (c) of this
521 section, the complainant or respondent may
522 petition the superior court for the judicial
523 district of Hartford-New Britain at Hartford for
524 an order requiring the commission to issue a
525 finding of reasonable cause or no reasonable cause
526 by a date certain. The commission shall develop
527 and make available to the complainant or
528 respondent, upon request, a sample petition which
529 may be used for this purpose. Service of such
530 petition shall be made by United States mail,
531 certified or registered, postage prepaid, return
532 receipt requested, without the use of a sheriff or
533 other officer, on the commission and all persons
534 named in the discriminatory practice complaint.
535 Within ten days after receipt of such petition,
536 the commission shall answer, and the matter may
537 then be claimed to the short calendar. The court
538 shall issue an order requiring the issuance of a
539 finding of reasonable cause or no reasonable cause
540 by a date certain without argument, unless the
541 commission contests the allegations of the
542 petition. Hearing of or argument on the petition
543 shall take precedence over other matters in the
544 court, as provided in section 46a-96 of the
545 general statutes. The court shall award court
546 costs and attorney's fees to the petitioning
547 party, provided such party is a "person", as

548 defined in subsection (1) of section 4-184a of the
549 general statutes, unless the commission shows good
550 cause for not issuing the finding of reasonable
551 cause or no reasonable cause within two years of
552 the date of filing or the date ordered by the
553 executive director for the investigator to issue
554 such finding, whichever is later. The amount of
555 court costs or attorney's fees shall be set in the
556 court's discretion but shall not exceed a total of
557 five hundred dollars. This subsection shall not
558 apply to complaints initiated by the commission or
559 to pattern or practice or systemic cases.

560 Sec. 9. Section 46a-54 of the general
561 statutes is repealed and the following is
562 substituted in lieu thereof:

563 The commission shall have the following
564 powers and duties:

565 (1) To establish and maintain such offices as
566 the commission may deem necessary;

567 (2) To organize the commission into a
568 division of affirmative action monitoring and
569 contract compliance, a division of discriminatory
570 practice complaints and such other divisions,
571 bureaus or units as may be necessary for the
572 efficient conduct of business of the commission;

573 (3) To employ a commission counsel who shall
574 not be subject to the provisions of chapter 67;

575 (4) To appoint such investigators and other
576 employees and agents as it deems necessary, fix
577 their compensation within the limitations provided
578 by law and prescribe their duties;

579 (5) To adopt, publish, amend and rescind
580 regulations consistent with and to effectuate the
581 provisions of this chapter;

582 (6) To establish rules of practice to govern,
583 expedite and effectuate the procedures set forth
584 in this chapter;

585 (7) To recommend policies and make
586 recommendations to agencies and officers of the
587 state and local subdivisions of government to
588 effectuate the policies of this chapter;

589 (8) To receive, initiate as provided in
590 section 46a-82, investigate and mediate
591 discriminatory practice complaints;

592 (9) By itself or with or by hearing officers
593 OR ADMINISTRATIVE LAW MAGISTRATES, to hold
594 hearings, subpoena witnesses and compel their
595 attendance, administer oaths, take the testimony

596 of any person under oath and require the
597 production for examination of any books and papers
598 relating to any matter under investigation or in
599 question;

600 (10) To make rules as to the procedure for
601 the issuance of subpoenas by individual
602 commissioners, [and] hearing officers AND
603 ADMINISTRATIVE LAW MAGISTRATES;

604 (11) To require written answers to
605 interrogatories under oath relating to any
606 complaint under investigation pursuant to this
607 chapter alleging any discriminatory practice as
608 defined in subdivision (8) of section 46a-51, and
609 to adopt regulations in accordance with the
610 provisions of chapter 54 for the procedure for the
611 issuance of interrogatories and compliance with
612 interrogatory requests;

613 (12) To utilize such voluntary and
614 uncompensated services of private individuals,
615 agencies and organizations as may from time to
616 time be offered and needed and with the
617 cooperation of such agencies, (A) to study the
618 problems of discrimination in all or specific
619 fields of human relationships and (B) to foster
620 through education and community effort or
621 otherwise good will among the groups and elements
622 of the population of the state;

623 (13) To require the posting by an employer,
624 employment agency or labor organization of such
625 notices regarding statutory provisions as the
626 commission shall provide;

627 (14) To require the posting, by any
628 respondent or other person subject to the
629 requirements of section 46a-64, 46a-64c, 46a-81d
630 or 46a-81e, of such notices of statutory
631 provisions as it deems desirable;

632 (15) (A) To require an employer having three
633 or more employees to post in a prominent and
634 accessible location information concerning the
635 illegality of sexual harassment and remedies
636 available to victims of sexual harassment; and (B)
637 to require an employer having fifty or more
638 employees to provide two hours of training and
639 education to all supervisory employees within one
640 year of October 1, 1992, and to all new
641 supervisory employees within six months of their
642 assumption of a supervisory position, provided any
643 employer who has provided such training and

644 education to any such employees after October 1,
645 1991, shall not be required to provide such
646 training and education a second time. Such
647 training and education shall include information
648 concerning the federal and state statutory
649 provisions concerning sexual harassment and
650 remedies available to victims of sexual
651 harassment. As used in this subdivision, "sexual
652 harassment" shall have the same meaning as set
653 forth in subdivision (8) of subsection (a) of
654 section 46a-60, and "employer" shall include the
655 General Assembly; and

656 (16) To enter into contracts for and accept
657 grants of private or federal funds and to accept
658 gifts, donations or bequests, including donations
659 of service by attorneys.

660 Sec. 10. Section 46a-68h of the general
661 statutes is repealed and the following is
662 substituted in lieu thereof:

663 If the commission issues an order pursuant to
664 subdivision (5) of subsection (c) of section
665 46a-56, the contractor or subcontractor may
666 request a hearing within fifteen days of receipt
667 of such order to allow such contractor or
668 subcontractor to show cause why the commission's
669 order should not be implemented. Upon receipt of a
670 request for a hearing, the commission shall
671 appoint a hearing officer OR ADMINISTRATIVE LAW
672 MAGISTRATE pursuant to the procedures adopted by
673 the commission. Any hearing requested pursuant to
674 this section shall be conducted in accordance with
675 the provisions of sections 4-177 to 4-182,
676 inclusive.

677 Sec. 11. Section 46a-68i of the general
678 statutes is repealed and the following is
679 substituted in lieu thereof:

680 The commission or any contractor or
681 subcontractor aggrieved by a decision of the
682 hearing officer OR ADMINISTRATIVE LAW MAGISTRATE
683 pursuant to section 46a-68h shall have a right of
684 appeal to the Superior Court as provided for in
685 section 4-183. Such appeal shall be privileged in
686 order of assignment of trial.

687 Sec. 12. This act shall take effect July 1,
688 1998, and shall be applicable to all cases pending
689 on and cases filed on or after said date.

690 STATEMENT OF LEGISLATIVE COMMISSIONERS: In
691 subsection (i) of section 2 "OR THE COMPLAINANT"
692 was added to correct an inadvertent omission and
693 sections 9 to 11, inclusive, were added to add
694 references to administrative law magistrates for
695 statutory consistency.

696 JUD COMMITTEE VOTE: YEA 39 NAY 0 JFS-LCO

* * * * *

"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

* * * * *

FISCAL IMPACT STATEMENT - BILL NUMBER SHB 5673

STATE IMPACT	Cost, see explanation below
MUNICIPAL IMPACT	None
STATE AGENCY(S)	Commission on Human Rights and Opportunities, Department of Administrative Services, Judicial Department

EXPLANATION OF ESTIMATES:

The bill requires 25 part-time Hearing Officers to be replaced by 5 full-time Administrative Law Judges. The judges shall be appointed by the Governor.

There is a cost for the Commission on Human Rights and Opportunities associated with the appointment of 5 Administrative Law Magistrates by the Governor.

The Chief Administrative Law Magistrate and each full-time Administrative Law Magistrate shall receive an annual salary equivalent to that set forth in subsection (h) of section 46b-231 and shall be entitled to Fringe Benefits.

These annual salaries would be \$77,224 for the Chief Administrative Law Magistrate and \$72,429 for each of four Administrative Law Magistrates.

The cost for fiscal year 1998-99 based on these magistrates being appointed on October 1, 1998 is \$363,995. This includes nine months of salaries for the Administrative Law Judges, 2 Legal Secretaries and an Administrative Assistant. There will be equipment costs of \$17,500. For fiscal year 1999-2000, there will be a

cost of \$461,940. This will include full-year salaries for the Chief Administrative Law Magistrate, four Administrative Law Magistrates and the support staff listed above. There could be some savings for fiscal years 1998-99 and 1999-2000 as part-time Hearing Officers leave service as their caseload is completed. The projected cost for the 25 part-time Hearing Officers in FY 1998-99 is \$161,000.

The bill specifies that the budget for the Administrative Law Magistrates should be a separate line item in the CHRO budget. The Budget Act would have to be adjusted to reflect this requirement. Currently, there are no appropriated funds for the Administrative Law Magistrates in SHB 5021, the budget bill for fiscal year 1998-99.

The bill also requires all expenses for any supporting staff, equipment and supplies for the 5 full-time Administrative Law Magistrates to be paid by the State, upon the approval of the Commissioner of the Department of Administrative Services (DAS). It is anticipated that this would result in a minimal workload increase to DAS, and in minimal additional costs that could be absorbed within existing resources. The estimated cost (included above) for 3 support staff and other expenses is \$112,500. It should be noted that the bill does not specify which State agency will pay for these support costs, but it is assumed that they would be paid by CHRO and not by DAS.

It is expected that any increase in caseload for the Judicial Department can be handled within anticipated budgetary resources.

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OLR BILL ANALYSIS

HB 5673

AN ACT CONCERNING THE DISCRIMINATORY PRACTICE COMPLAINT PROCEDURE OF THE COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

SUMMARY: This bill replaces the Commission on Human Rights and Opportunities' (CHRO's) panel of at least 25 part-time hearing officers with five administrative law

magistrates; alters where appeals of CHRO dismissals can be filed; gives the executive director or his designee, instead of the full commission, the authority to decide whether to reconsider the dismissal of a complaint; and alters time frames for CHRO to investigate complaints,

The bill expands the right to file discrimination lawsuits. CHRO must issue an authorization for the complainant to sue if the complainant and the respondent jointly request it.

It gives complainants whose cases are dismissed by CHRO based on a merit assessment review or for failure to accept full relief from a respondent the right to sue the respondent in court within 90 days of the dismissal. This right is limited to complainants who do not ask CHRO to reconsider the dismissal. If they ask for reconsideration and it is denied, their only remedy is an appeal.

The bill extends the right of a complainant to request authorization from CHRO to sue in court after the complaint has been pending for more than 210 days to all types of discrimination complaints. Under current law, this right applies only to employment discrimination cases, except those based on sexual orientation.

The bill specifies that CHRO maintains jurisdiction to investigate and resolve complaints even though it fails to meet deadlines for conducting and completing investigations and initiating administrative hearings.

The bill requires CHRO to report annually to the governor and the Judiciary Committee on the number of cases where statutory time frames for investigating complaints are not met and the reasons for it.

It establishes procedures that (1) CHRO must follow after a complaint has been pending without a finding of reasonable cause or no reasonable cause for over 21 months and (2) parties may pursue if a complaint has been pending for over two years.

EFFECTIVE DATE: July 1, 1998 and applies to all cases pending on that date.

FURTHER EXPLANATION**Administrative Law Magistrates**

The bill requires the governor to appoint five full-time administrative law magistrates, with the General Assembly's advice and consent, to conduct CHRO administrative hearings. It phases out the 25 part-time hearing officers who currently hear such cases. Administrative law magistrates must be attorneys licensed to practice in the state for at least five years, the current requirement for part-time hearing officers, or they must have five years experience in civil rights, employment, or housing discrimination law.

The chief law magistrate is to be paid \$77,224; the four other law magistrates, \$72,429. They also receive regular state employee fringe benefits. Stenographic and clerical assistance, equipment, and supplies for law magistrates must be paid for by the state if approved by the administrative services commissioner. The budget for the law magistrates must be a separate line item within CHRO's budget.

By October 1, 1998, the CHRO executive director must choose one law magistrate to serve as chief law magistrate for a one-year term. The chief law magistrate must supervise the other four and assign them on a rotating basis to conduct hearings, including those for which trial on the merits did not start before October 1, 1998. The bill prohibits the magistrates from appearing before CHRO, a hearing officer, or another magistrate for one year after leaving office.

The law magistrates serve five-year terms. But, for the first terms beginning October 1, 1998, one serves for three years, two for four, and two for five.

Part-time hearing officers serving on July 1, 1998 continue to serve until all their cases are completed. The chief law magistrate may transfer their cases to a law magistrate, upon the officer's recommendation and after the hearing officer solicits the parties' views.

Time Frames to Investigate Complaints

The bill increases the time CHRO has to serve a copy of a complaint on a respondent from within 10 to within 20 days after it takes the complaint. It specifies that CHRO, for good cause, may grant respondents a 15-day extension beyond the current 30-day period within which they must file an answer with CHRO. (This 15-day extension is currently allowed by regulation.)

The bill requires CHRO to administratively review a case file within 90 days after it receives the answer, instead of within 90 days after it receives the complaint. Thus, it gives CHRO up to an additional 65 days to conduct its review. By law CHRO may dismiss a complaint after this administrative review if it does not state a claim for relief, is frivolous on its face, or there is no reasonable possibility that investigating it will result in a finding of reasonable cause.

The bill reduces the time for investigating complaints. Under current law, the investigator must make a finding of reasonable cause or no reasonable cause within 12 months after the complaint is filed. The bill requires that the finding be made within 190 days after the administrative review is completed. Thus, the new maximum for investigating a case is 345 days from the date the complaint is filed. By law, the CHRO executive director may grant the investigator two three-month extensions for good cause. (The bill does not affect the law's shorter time frames for handling housing discrimination complaints.)

The bill requires a CHRO investigator who finds reasonable cause to believe that discrimination occurred to attempt to eliminate it by conference, conciliation, or persuasion within 50 instead of 60 days after the finding. It requires that he certify the complaint within 10 days of the end of this 50-day period if he failed to eliminate the discrimination practice. Current law requires certification within 45 days after a reasonable cause finding.

The bill requires that an administrative hearing conference be held within 45 days after the investigator certifies the complaint rather than within 90 days after a reasonable cause finding. Thus, it increases a maximum time frame from 90 to 105 days from the date of a reasonable cause finding.

The bill also grants those alleging discrimination in employment, public accommodations, and credit practices or any other area in which CHRO has jurisdiction to investigate, the right to sue when CHRO dismisses their complaint if they do not ask CHRO to reconsider its dismissal. The new right to sue following a dismissal applies to dismissal by the executive director after a merit review because the complaint failed to state a claim for relief, is frivolous on its face, or there is no reasonable possibility that investigating it will result in a finding of reasonable cause. It also applies to dismissals based on a complainant's refusal to accept a respondent's offer of full relief coupled with the respondent's elimination of the discriminating practice and efforts to prevent future discrimination. It does not apply to (1) dismissals based on a no reasonable cause finding by an investigator or (2) cases dismissed because the complainant, after notice and without good cause, failed to attend a mandatory mediation session.

Reporting Requirement

The bill requires CHRO to report annually to the governor and the Judiciary Committee (1) the number of cases that exceed the statutory time frames for issuing a finding of reasonable cause or no reasonable cause; (2) the reasons for failing to comply; (3) the number of petitions filed by complainants or respondents in court for an order requiring CHRO to issue a finding by a certain date; and (4) CHRO's recommendation for legislative action necessary for it to meet the time frames for making a finding.

Procedure For Complaints Pending Over 21 Months

Under the bill, if a complaint has been pending for more than 21 months without a finding of reasonable cause or no reasonable cause, CHRO's executive director must immediately schedule a meeting with the complainant, respondent, and investigator to determine when a finding can be made. He must schedule the meeting by notice sent by certified mail, return receipt requested, and must notify the complainant of his right to ask for a release to sue.

If the parties and investigator cannot agree on a date for the issuance of a finding, the executive director

appealing resides.

BACKGROUND

Deadlines and Jurisdiction

The state Supreme Court recently held that prior statutory time limits for CHRO to investigate a discrimination complaint and hold a public hearing after a finding of reasonable cause are mandatory. (Angelsea Products, Inc. v. Commission on Human Rights and Opportunities et al., 236 Conn. 681, April 1996).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Report
Yea 39 Nay 0